

From: Thad Bagnato
To: "Todd Littleton"
Cc: "Richard Kahn"; rene@capronlawllc.com
Subject: Outstanding Balance/Damage Mitigation
Date: Wednesday, November 10, 2021 9:09:14 AM
Attachments: MM Damage Mitigation.pdf

To Todd Littleton:

Todd, this will serve as notice to The Muffin Man that the outstanding balance listed in the attached spread sheet is due and payable to Creative Bakery Solutions LLC (A.K.A. CBS). Additionally based on the attached fully executed contract the amount due, \$506,000.00 automatically converted to an interest free loan payable over 10 equal installments once you discontinued doing business with CBS.

Also any unused MM /CBS mix that is in your possession must be returned in order to mitigate the damages against your balanced owed; we will make the necessary arrangements to have it picked up and returned to us.

Respectfully,

Thad Bagnato

Thad Bagnato
Creative Bakery Solutions
13791 East Rice Place
Suite 116
Aurora, CO 80015
Office: 303-481-4260
Cell: 303-918-7202
Fax: 303-481-4460
tbagnato@creativebakerysolutions.com

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Any views or opinions expressed are those of the author and do not necessarily represent those of

Creative Bakery Solutions.

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Viruses: We take precautions to ensure email is free of viruses but cannot guarantee this. Accordingly we advise scanning all email and attachments.

From: [Rene Capron](#)
To: "Reid Dyer"
Cc: "John Fort"; "David Wheeler"
Bcc: "bagnato@creativebakerysolutions.com"; "rkahn@creativebakerysolutions.com"
Subject: RE: The Muffin Mam, 21-02909
Date: Friday, November 19, 2021 5:47:05 PM

Dear Reid:

Thank you for reaching out. We disagree that your client has a claim to those ingredients. I direct your attention to the UCC as discussed below. Please let me know your availability to talk. Under section 702, your client does not have a right to retain these goods.

Pursuant to section 2-702 of the UCC "when the seller discovers the buyer has received goods on credit while insolvent, he may reclaim the goods upon demand made within ten days after the receipt. . ." CBS provided demand to reclaim the goods on November 10, 2021, the day after discovering Muffin Mam is insolvent. At least 3 truckloads of the goods were shipped to and received by Muffin Mam on or after November 1, 2021. It seems clear that Muffin Mam was insolvent at the time of receipt of the goods referenced above.

Further, based upon the communication with CBS and Muffin Mam it is possible that Muffin Mam made a misrepresentation of solvent to CBS, in writing September 13, 2021. Thereafter, and based upon such representations, Muffin Mam received 12 additional shipments of goods from CBS from September 29, 2021 through October 29, 2021. It is unknown whether any goods shipped from September through October remain at the plant; however, it is likely that at least some of the goods shipped in November remain.

Note, the mix is a perishable commodity and if not disposed of properly and timely, it will provide no security for your client – it will just be a waste and end up costing your client. My client seeks to simply come get what they are entitled to without cost to your client.

Alternatively, 2-703(d) of the UCC provides that an aggrieved seller may resell and recover damages. This includes "reselling the goods concerned." See UCC 2-706(1). My cell phone is 970-210-8146 to talk further.

René E. Capron
Capron Law, LLC
13791 East Rice Place
Aurora, CO 80015
303.481.4270 (office)
www.capronlawllc.com

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From: Reid Dyer [mailto:dyerr@mvalaw.com]
Sent: Friday, November 19, 2021 2:25 PM
To: rene@capronlawllc.com
Cc: John Fort <johnkfort@gmail.com>; David Wheeler <davidwheeler@mvalaw.com>
Subject: RE: The Muffin Mam, 21-02909

Rene,

John Fort forwarded the below email to me today. I represent Pinnacle Bank—which is the Debtor's senior secured lender and holds a blanket lien on all the Debtor's personal property.

It does appear that your client may have a reclamation claim on the goods shipped to the Debtor. However, under § 546(c), any reclamation claims are "subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof." Therefore, Pinnacle Bank's lien would have priority over any reclamation claim. To that end, the bank opposes any attempts to recover those goods.

If you would like to discuss, please let me know.

Regards,

Reid E. Dyer
Attorney at Law
t 843.579.7045
f 843.579.8754
reidtyer@mvalaw.com

Moore&VanAllen

78 Wentworth Street
Charleston, SC 29401-1428
843.579.7000
www.mvalaw.com

From: John Fort <johnkfort@gmail.com>
Sent: Friday, November 19, 2021 11:05 AM
To: Reid Dyer <dyerr@mvalaw.com>
Subject: Fwd: The Muffin Mam, 21-02909

EXTERNAL EMAIL - USE CAUTION

----- Forwarded message -----

From: **Rene Capron** <rene@capronlawllc.com>
Date: Thu, Nov 18, 2021 at 7:55 PM
Subject: Re: The Muffin Man, 21-02909
To: John Fort <johnkfort@gmail.com>
Cc: Terry Howe <terry@terryhowe.com>, <bagnato@creativebakerysolutions.com>, <rkahn@creativebakerysolutions.com>

What if there is no cost? I might be able to make it so that our clients would just need access?
Let me know if that works.
Thanks.
Rene

Sent from my iPhone

On Nov 18, 2021, at 5:45 PM, John Fort <johnkfort@gmail.com> wrote:

I have made extremely reasonable proposals to Pinnacle Bank to let us liquidate finished inventory and ship back raw inventory. They have been uncooperative. We have no money in the estate so I cannot do anything at this time.

JF

On Thu, Nov 18, 2021 at 7:17 PM Rene Capron <rene@capronlawllc.com> wrote:

Good evening:
I am writing to find out the status of my client's retrieving their product. Please advise. As previously mentioned these are perishables and need to be obtained as soon as possible to mitigate CBS's damages. Mr. Bagnato reached out to Mr. Howe directly yesterday but we haven't heard anything back. Please note, the email from Mr. Howe indicated that a buyer could buy all of the ingredients. If this is something that is in the pipeline, we need to ensure that the product that CBS has a claim to is paid for before CBS will agree to a release. CBS has not agreed to release the product to be part of a mass sale, but might be open to the idea if payment is made for purchase of the product.
If you'd like to discuss further tomorrow (Friday, 11/19), I am available from 9am to 12pm Mountain Time; and from 3:30 Mountain Time to 5:30 pm.
Best,
Rene

Rene E. Capron
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From: John Fort [mailto:johnkfort@gmail.com]
Sent: Monday, November 15, 2021 10:52 AM
To: Rene Capron <rene@capronlawllc.com>
Subject: Re: FW: The Muffin Man, 21-02909

I do not know any more right now. Trying to see if bank will let his liquidate inventory so we can have \$ to get people in the plant to help.

JF

On Mon, Nov 15, 2021 at 12:41 PM Rene Capron <rene@capronlawllc.com> wrote:

Good day:
I am just following up to find out the status of CBS getting into the MM plant to obtain their product. Please let me know, as they need to make arrangements for loading and trucking.
Thanks.

Rene E. Capron
Capron Law, LLC
13791 East Rice Place
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From: John Fort [mailto:johnkfort@gmail.com]
Sent: Thursday, November 11, 2021 2:43 PM
To: Rene Capron <rene@capronlawllc.com>; Terry Howe <terry@terryhowe.com>
Subject: Re: FW: The Muffin Mam, 21-02909

Yes, johnkfort@gmail.com is the address to use. I am copying Terry Howe so he can look for the labels you attached.

John

On Thu, Nov 11, 2021 at 4:21 PM Rene Capron <rene@capronlawllc.com> wrote:

Thank you – use the gmail address, correct?

CBS has provided the attached label for identification purposes. Any bag of mix that has “Muffin Mam” name on their bags – is the CBS mix. No other mix manufacturer puts made for MM on their labels or states “Manufactured for Muffin Mam.” There will be other mix in the plant – Dawn Foods, Pillsbury, and BakenJoy. Obviously, CBS doesn’t want those. Anything that has a MM label is from CBS. An example of the labels are attached, although these are old labels and refer to the old Simpsonville plant. I don’t have copies of the new labels but can get them if need be. Due to their 20 years of doing work with MM, no other mix manufacturer makes these labels except CBS, and this is how the mix is tracked back to CBS.

As always, let me know if there are any questions. We look forward to hearing from you tomorrow and hope you enjoy your evening.

Best,

Rene

Rene E. Capron
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From: John Fort [mailto:johnkfort@gmail.com]
Sent: Thursday, November 11, 2021 1:53 PM
To: rene@capronlawllc.com
Subject: Fwd: FW: The Muffin Mam, 21-02909

This is a better email address for correspondence. I am copying my liquidator who will be at the plant tomorrow to see if we can identify the goods.

Thanks, John

----- Forwarded message -----

From: Rene Capron <rene@capronlawllc.com>
Date: Thu, Nov 11, 2021 at 3:39 PM
Subject: FW: The Muffin Mam, 21-02909
To: <johnkfort@gmail.com>
Cc: <rbagnato@creativebakerysolutions.com>, <rkahn@creativebakerysolutions.com>

Good afternoon Mr. Fort:

I am corporate counsel for Creative Bakery Solutions (“CBS”). Mr. Bagnato forwarded to me your e-mail below that claims title to the mix in Muffin Mam’s plant has passed to the debtor.

Pursuant to section 2-702 of the UCC “when the seller discovers the buyer has received goods on credit while insolvent, he may reclaim the goods upon demand made within ten days after the receipt. . . .” CBS provided demand to reclaim the goods on November 10, 2021, the day after discovering Muffin Mam is insolvent. At least 3 truckloads of the goods were shipped to and received by Muffin Mam on or after November 1, 2021. It seems clear that Muffin Mam was insolvent at the time of receipt of the goods referenced above.

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To avoid interference with the bankruptcy, it makes sense to have the unused mix provided to CBS. Thus, it would be to everyone's benefit, including the other creditors to reduce the amount of CBS's claim and to avoid costs of disposal of a perished goods.

If you'd like to discuss further, please do not hesitate to contact me. My cell phone is 970-210-8146 if I am not in my office.

Best,

Rene

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From: Thad Bagnato [mailto:tbagnato@creativebakerysolutions.com]

Sent: Thursday, November 11, 2021 10:18 AM

To: rene@capronlawllc.com

Cc: rkahn@creativebakerysolutions.com

Subject: FW: The Muffin Man, 21-02909

Rene, this one is all yours – thanks!

Thad

From: John Fort <johnkfort@gmail.com>

Sent: Thursday, November 11, 2021 10:06 AM

To: tbagnato@creativebakerysolutions.com; John Fort <john.fort@caselinkweb.com>

Subject: The Muffin Man, 21-02909

Under what legal theory is the mix yours? It was delivered and I think under the UCC title has passed to the debtor.

JF

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